

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6725 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL MAGANBHAI KESURBHAI SINCE DECEASED THROUGH HEIRS

Versus

BHOGILAL PUNJABHAI VASAVA

Appearance:

None present for Petitioners

MR HL JANI for Respondent No.5

None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/10/97

ORAL JUDGEMENT

1. Heard the learned counsel for the respondent No.5 and perused the special civil application.

2. The petitioner has expired during the pendency of this special civil application and his heirs and legal representatives have already been brought on record.

3. None of the respondents including the respondent No.5 has filed reply to this special civil application.

4. The land in dispute is admeasuring 18 sq. mts. only. The respondents No.1 to 4 are Vasava by caste and they were the owners and in possession of the said land from whom the petitioner purchased this land by registered sale deed on 16-6-1981 for Rs.800/-. After purchasing this land, the petitioner constructed a pucca house after spending considerable amount and that house is being used by the petitioner for the purpose of residence and keeping the agricultural implements. The petitioner stated that the land is a Gamthan land (Gabhan).

5. The Deputy Collector initiated suo motu inquiry by giving notice to the petitioner in the year 1984 to show cause why the sale of the land in dispute made in favour of the petitioner by the respondents NO.1 to 4 should not be declared invalid as it is made in breach of the provisions of section 73-AA of the Bombay Land Revenue Code. This notice was replied by the petitioner and it appears that the reply of the petitioner was not found favour with the Deputy Collector and the said authority under its order dated 18-8-1984 declared the sale transaction as invalid and further ordered for forfeiture of the land in dispute. A copy of this order has been filed by the petitioner on the record of this special civil application as annexure 'A'.

6. The petitioner against this order preferred a revision application NO.752 of 1984 before the respondent No.5. The respondent No.5 vide its order dated 2-8-1985 dismissed the revision application of the petitioner. A copy of this order has been produced on the record of this special civil application by the petitioner as annexure 'B'. Hence, this special civil application before this Court.

7. In this special civil application, the petitioner challenging those orders aforesaid raised manifold contentions, namely

(i) the initiation of suo motu inquiry for declaration of the sale deed to be invalid after three years is illegal and arbitrary,

(ii) the land in dispute is not an agricultural land but it is only a village site land meant for the construction of house and as such it does not fall within the meaning of section 73-AA of the

Code, and

(iii) Section 73AA of the Code was enacted mainly with a purpose to prevent exploitation of the adivasi people who were selling their agricultural lands which were their main source of income and livelihood. This land is merely a piece of land and the petitioner has purchased the same by paying the market value of the same to the respondents No.1 to 4.

8. The counsel for the respondent No. 5 contended that admittedly the land in dispute was belonging to and in possession of an adivasi and as such the transfer of the said land to a non-adivasi is only permissible with prior permission of the Government and admittedly as the prior permission was not taken, the respondent has not committed any error whatsoever in declaring the sale deed to be invalid and further ordering for forfeiture of the land to the Government. It has next been contended that in case only on the ground of delay such proceedings are declared to be illegal and quashed by this Court then the very purpose and object for which section 73-AA has been enacted in the Code will be frustrated. The underlying object of the provisions of section 73-AA of the Code is that the lands of the adivasis are not taken away by the non-adivasis. The adivasis are the poor persons and as they are facing the difficulties and anybody can exploit them and to protect them from any exploitation the benevolent provision of section 73AA has been enacted in the Code.

9. I have given my thoughtful consideration to the submissions made by the learned counsel for the respondent No.5.

10. It is true that section 73-AA of the Code has been enacted with a purpose and object to see that the adivasis are not being exploited by the non-adivasis or even by the adivasis. To enact a provision for the protection, welfare and well-being of the adivasis is one thing and to see that this provision is strictly enforced is an another thing. The important is the implementation of the provisions made for the benefit, welfare and well-being of the adivasis in the Code. Undisputedly, the land has been transferred by the respondents No.1 to 4 to the petitioner by registered sale deed and as this transfer was being effected without any permission from the competent authority it is invalid. To initiate the suo motu proceedings for examining the legality, correctness and propriety of such sale transaction, in

the Code the period of limitation has not been prescribed but law is well-settled that where the period of limitation is not prescribed for exercising suo motu powers by the authority still it has to be exercised within reasonable time. I find sufficient merits in the contention of the counsel for the respondent No.5 that merely on the ground of delay in initiation of the proceedings for declaration of the sale transaction in the present case to be invalid the orders passed by the authorities may not be quashed and set aside but in case the party had changed the position during the interregnum and it has spent huge amount in the construction of house etc. then this question of delay in initiation of the proceedings has to be looked into differently. In the premises aforesaid, now I may proceed to examine this matter on merits.

11. It is the duty of the Officers of the State Government in all the departments i.e. other than the Revenue Department also to see that whatever enactment has been made for the benefit, welfare and well-being of the adivasis are strictly complied with. The learned Government advocate has proceeded under a misconception of law that to enforce the provisions of the Code only the Revenue Officers are the concerned persons and not the Officer who has been given the powers to register the documents under the provisions of the Registration Act. The registering officer while examining the documents for registration was under a legal obligation to see whether the permission has been taken or not for transfer of the land by adivasi to a non-adivasi. That officer is not only concerned with the registration of the document but he has to also look into the legality and propriety of the document to the extent where the protection has been provided to adivasis. He cannot be a mere spectator and a post-office to register the documents which are presented for registration. It is also incorrect to presume and assume that the officer who has been given the powers to register the documents has only to examine the documents with reference to the stamp duty to be paid by the parties. I am here for the last three years and I am of the considered opinion that in this State these laws are only meant for violation and not for the enforcement of the same. I have seen many of the sale deeds of the lands of adivasis to non-adivasis without there being any permission granted by the competent officer for the same and those sale deeds have been registered by the registering authority. This approach of the officers of the State Government is highly arbitrary and unjustified. I am of the considered opinion that the registering officer may be perfectly

legal and justified in declining to accept the document for registration when he finds that the sale deed executed by an adivasi in favour of a non-adivasi without there being any prior permission of the competent authority for the transfer of the land. In such matter that officer was even within its competence to ask the parties to produce to its satisfaction the material showing that the competent authority has granted the necessary permission for the transfer of the land of adivasi to non-adivasi. If the registering officer would have acted in the manner aforesaid then certainly thousands of the transactions of the sale of lands of adivasis to non-adivasis would not have been there. During the course of arguments, an attempt has been made by the counsel for the respondent No.5 that the registering authority may not be aware of the provisions of the Land Revenue Code. Though it is too difficult to accept such a proposition but even if it is assumed and presumed for the sake of arguments for the time being then how far it is expected of the petitioner to know the rigor of the provisions of the Land Revenue Code in the matter of sale of land of adivasi to a non-adivasi. In this case the petitioner is a bonafide purchaser and if it is so then what for he has been penalised. However, I find fault with the State Government that it has not issued necessary instructions in the form of resolution or circular or notification to the registering authorities to prima-facie satisfy themselves that the sale transaction of the land of the adivasi to a non-adivasi has been entered into with the prior permission and sanction of the competent authority. In case such a circular, direction or notification would have been issued then the alleged exploitation of the adivasis would have been stopped. All endeavour should have been made by the State Government, its officers and functionaries to see that necessary check and verification has been put at all levels to the sale transaction or any other transaction of the transfer of the land in all the concerned departments so that the exploitation of this class of persons may not be there.

12. The facts which have been stated on the record of this special civil application are that the petitioner has raised the construction on the land and naturally when he raised the construction on the land then certainly it would have cost him also. What amount actually has been spent by him in the construction is not very material but the material thing is that the construction has been raised on the land. It is not clear on the record whether this construction has been raised by the petitioner by taking the prior permission

of the competent authority. It is also not on the record of this special civil application whether for the land situated in village Karjan, District Baroda any permission for construction is required to be taken from Gram Panchayat or Nagar Panchayat or from some other officer or authority or not. Be that as it may, the fact is that the construction has been raised and nobody has objected in raising of the construction by the petitioner on the land in dispute. A larger question does arise why the concerned Gram Panchayat or the Nagar Panchayat or the Officers of the Revenue Department have not objected to the raising of the construction by the petitioner on the land of the adivasi or more precisely why the vigilance was not kept by the Department on the land belonging to and in possession of an adivasi. This class of persons belong to down trodden class and where the legislature has decided to enact a law for their protection then it was more obligatory on the part of the Officers of the Revenue Department to keep vigilance so that this class of persons are not being exploited. That has also not been done in the present case.

13. From the facts stated above, it is clearly borne out that the petitioner has changed its position or to be more precisely, the respondent No.5 has permitted the petitioner to change its position after purchase of the land in dispute. The delay in such matters in initiation of the proceedings for declaration of the sale deed to be invalid under the provisions of sec. 73-AA of the Code is to be taken seriously and is fatal. The respondents by their inaction or omission may be deliberate or bonafide have permitted the petitioner to settle on the land and in fact he has settled on the land. Silence of the concerned authorities in such matters for three years is a serious matter in a case where the party, the transferee has changed its position. It is also not on the record of this special civil application that the petitioner was not a bonafide purchaser. The doctrine of bonafide purchaser may not be strictly complied to the sale transactions of the nature as prohibited under section 73-AA of the Code but still while examining the question of delay in initiation of the proceedings for cancellation of the sale in the matter this fact may be a relevant fact. What section 73-AA of the Code says that the occupancy of a person belonging to any of the scheduled tribe shall not be transfer to any person without previous sanction of the Collector. So the transfer is not totally prohibited but it is permissible with the previous sanction of the Collector. That sanction has not been taken in the present case but in the facts of the present case and particularly the fact

that the petitioner has raised the construction on the land and the proceedings have been initiated after three years of the sale deed, I consider it to be appropriate to send the matter to the Collector to consider the question of grant of post-facto sanction to the sale transaction of the land. The respondents No.1 to 4 to whom this land was belonging have not objected to the sale nor they have come up with a case that they have been exploited and that they now want the land for them. This course I am adopting for the reason that the State Government, its officers and functionaries are in fact responsible for all these transactions as they have not put any check or vigilance in these matters as well as for the reason that there is a delay of three years in initiation of the proceedings under section 73-AA of the Code. The respondent-State its officers and functionaries have permitted the petitioner by necessary implication to raise the construction and now if at this stage he is ordered to be ousted from the land and the house standing thereon then it will not be reasonable. The sale transaction is of the year 1981 now we are in the year 1997. This Court has protected the petitioner by grant of interim relief also.

14. In the result, the orders passed by the Deputy Collector and the State annexures 'A' and 'B' impugned in this special civil application are quashed and set aside and the matter is sent back to the Collector, Baroda to consider the case of the petitioner for grant of post-facto sanction to the sale deed of the land in dispute executed by the respondents No.1 to 4 in his favour. It is further directed that whatever charges which were legally payable to the Government for grant of sanction to the sale deed of the land in question in favour of the petitioner the same shall be deposited in the Government by the petitioner. The matter is of the year 1981 and as such it is expected of the Collector to decide this matter expeditiously say within six months from the date of receipt of certified copy of this order. Still if for the reasons to be recorded in the order, the Collector, Baroda is satisfied that no post-facto sanction can be granted in the present case then a copy of the said order may be sent to the petitioner by registered post and liberty is granted to the petitioner for revival of this special civil application merely on filing a note in case of difficulty. The special civil application and rule stand disposed of accordingly.

zgs/-